

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

STATE OF TEXAS, STATE OF
LOUISIANA, STATE OF
MISSISSIPPI, STATE OF UTAH,
JEFFREY W. TORMEY, GUN
OWNERS OF AMERICA, INC., GUN
OWNERS FOUNDATION,
TENNESSEE FIREARMS
ASSOCIATION, and VIRGINIA
CITIZENS DEFENSE LEAGUE,

Plaintiffs,

V.

CIVIL ACTION No.2:24-CV-00089-Z

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES,
UNITED STATES DEPARTMENT OF
JUSTICE, MERRICK GARLAND, in his
official capacity as Attorney General of
the United States, *and* STEVEN M.
DETTELBACH, in his official capacity
as Director of ATF.

Defendants.

**PLAINTIFF'S OPPOSITION ON MOTION OF BRADY CENTER TO PREVENT
GUN VIOLENCE, MARCH FOR OUR LIVES, GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE, AND EVERYTOWN FOR GUN SAFETY FOR LEAVE
TO FILE A BRIEF AS AMICI CURIÆ**

Plaintiffs the State of Texas, State of Louisiana, State of Utah, Jeffrey W. Tormey, Gun Owners of America, Inc., Gun Owners Foundation, Tennessee Firearms Association and Virginia Citizens Defense League (collectively, “Plaintiffs”) file this Response in Opposition to the Motions to File Leave for Amicus Brief of the Brady Center to Prevent Gun Violence, March for our Lives, Giffords Law Center to Prevent Gun Violence, and Everytown for Gun Safety (collectively, “Amici”).

BACKGROUND

Plaintiffs bring a number of claims challenging the Bureau of Alcohol, Tobacco, Firearms and Explosives' latest rulemaking, "Definition of 'Engaged in the Business' as a Dealer in Firearms." 89 Fed. Reg. 28968. Because Defendants set an abbreviated effective date, contrary to past practice, the Parties agreed to an expedited briefing schedule so that this Court may hear Plaintiffs' plea for relief before the Rule imperils the rights of law-abiding gun owners. Under this schedule, Defendants' deadline to file a response to Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction is 5:00 P.M. CDT on May 14, 2024. Plaintiffs then have 24 hours to submit a reply in support of their motion. This is to ensure that both the Parties and this Court have time to process all the briefing in preparation for a May 16 hearing on Plaintiffs' motion.

On May 14, less than two days before the hearing, and one day before Plaintiff's reply is due, Amici submitted to this Court a joint motion for leave to file a brief as amicus curiae. In ordinary circumstances, Plaintiffs would consent to the motion. However, in this instance, Plaintiffs believe that Amici's filing is untimely and prejudicial given the tapered briefing schedule and the imminency of the May 16 hearing. Plaintiffs informed Amici of this during the conferral process, explaining Plaintiffs could not consent because Plaintiffs would not have adequate time to respond to Amici's arguments before the hearing. Amici sought leave from the Court anyway. Plaintiffs now submit this opposition and ask the Court deny to deny the request for leave to file as amicus curiae.

STANDARD

"No federal rule exists governing the procedural or substantive requirements for district court amicus curiae briefs." *Evanston Ins. Co. v. Rodriguez Eng'g Lab'ys*, No. 1:21-CV-01129-

RP, 2023 WL 379277, at *1 (W.D. Tex. Jan. 20, 2023). “Likewise, the Local Rules of the United States District Court for the Western District of Texas do not address the issue.” *Id.* Thus, district courts have “broad discretion” when deciding whether to permit amicus curiae briefs. *Id.* (citing *In re Halo Wireless, Inc.*, 684 F.3d 581, 595-96 (5th Cir. 2012)).

In exercising this discretion, district courts should consider whether the information offered through the amicus brief is “timely and useful” or otherwise “necessary to the administration of justice.” *Id.* (citations omitted); *see also Texas v. United States*, No. 6:21-cv-00003, 2021 WL 2172837, at *1 (S.D. Tex. Mar. 5, 2021) (stating that “[f]actors relevant to the determination of whether amicus briefing should be allowed include whether the proffered information is ‘timely and useful’ or otherwise *necessary to the administration of justice*” (emphasis in original) (citations omitted)).

ARGUMENT

Accepting the amici brief, submitted so late in the briefing schedule, would be neither timely nor useful but would be unfair to Plaintiffs. The Court should exercise its discretion by striking the brief.

Under any imaginable standard, the amici’s filing is tardy and unfair to Plaintiffs. May 14th is less than two days before the Court will conduct its scheduled hearing to consider Plaintiffs’ TRO/ PI motion. As a result of the amici’s hasty filing, none of the parties have had an opportunity to consider the amici brief in time to either address its arguments in their briefing or in their oral presentations. To the extent the brief develops new legal theories in opposition to an injunction, the Court would deprive Plaintiffs of an opportunity to refute them, by accepting the brief. *See* Fed. R. App. P. 29(e) Adv. Comm. Notes to 1998 Amend. (commenting that the FRAP’s deadline

allows opponents sufficient time to review arguments made by an amicus and “address them in the party’s responsive pleading”).

Moreover, there is no extraordinary reason for the Court to receive the amici’s brief despite its late submission. *See Halo Wireless*, 684 F.3d at 595-96 (a court should accept an untimely amicus only when justified by “the value of the potential amicus brief”) (citing *Fry v. Exelon Corp. Cash Balance Pension Plan*, 576 F.3d 723, 725 (7th Cir. 2009)). “[A]cceptance of an ... amicus curiae should be allowed only sparingly, unless the amicus has a special interest.” *Evanston*, No. 1:21-CV-01129-RP, 2023 WL 379277 at *1 (W.D. Tex. Jan. 20, 2023) (citation omitted). The amici do not approach the Court with a “special interest.” Rather, amici present themselves as advocates for sound public policy. Defendants likewise purports to have pursued public welfare by promulgating its new rule, and therefore the amici have not approached the Court with a unique interest. *See Club*, 2007 WL 3472851 at *3 (amicus excluded in part because it “has the same interests and policy objectives” as a party). The amici’s brief will add nothing invaluable to this Court’s consideration of the case that might excuse its tardiness.

The filing of an amicus brief ought to be timely. The amici’s filing is untimely and their motion for leave should be denied on that basis.

CONCLUSION

For these reasons, Defendants request that this Court deny the amici’s Motion for Leave to file Amicus Brief.

Date: May 15, 2024

Respectfully submitted.

KEN PAXTON
Attorney General

/s/Garrett Greene
GARRETT GREENE
Special Counsel
Texas Bar No. 24096217

BRENT WEBSTER
First Assistant Attorney General

KATHLEEN T. HUNKER
Special Counsel
Texas Bar No. 24118415

RALPH MOLINA
Deputy Attorney General for Legal Strategy

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
Special Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel.: (512) 463-2100
garrett.greene@oag.texas.gov
kathleen.hunker@oag.texas.gov

RYAN D. WALTERS
Chief, Special Litigation Division

COUNSEL FOR PLAINTIFF STATE OF TEXAS

LYNN FITCH
Attorney General of Mississippi

ELIZABETH B. MURRILL
Attorney General

/s/Justin L. Matheny
JUSTIN L. MATHENY (MS Bar 100754)
Deputy Solicitor General
OFFICE OF THE ATTORNEY GENERAL
P.O Box 220
Jackson, MS 39205-0220
Tel: (601) 359-3680
Fax: (601) 359-2003
justin.matheny@ago.ms.gov

/s/J. Benjamin Aguiñaga
J. BENJAMIN AGUIÑAGA*
Solicitor General

**COUNSEL FOR PLAINTIFF STATE OF
MISSISSIPPI**

LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third Street
Baton Rouge, Louisiana 70802
Tel: (225) 506-3746
aguinagab@ag.louisiana.gov

**COUNSEL FOR PLAINTIFF THE STATE OF
LOUISIANA**
*Admission To NDTX Pending

<p>SEAN D. REYES Utah Attorney General</p> <p><u>/S/ Andrew Dymek</u> ANDREW DYMEL* Assistant Solicitor General</p> <p>UTAH OFFICE OF THE ATTORNEY GENERAL 350 North State Street, #230 P.O. Box 142320 Salt Lake City, Ut 84114-2320 Tel.: 801-366-0533 adymek@agutah.gov</p> <p>COUNSEL FOR PLAINTIFF STATE OF UTAH *Admission To NDTX Pending</p>	<p><u>/s/ Stephen D. Stamboulih</u> STEPHEN D. STAMBOULIEH</p> <p>STAMBOULIEH LAW, PLLC NDTX#: 102784MS MS Bar No. 102784 P.O. Box 428 Olive Branch, MS 38654 (601) 852-3440 stephen@sdslaw.us</p> <p>COUNSEL FOR JEFFERY W. TORMEY, GUN OWNERS OF AMERICA, GUN OWNERS FOUNDATION, TENNESSEE FIREARMS ASSOCIATION, AND VIRGINIA CITIZENS DEFENSE LEAGUE</p>
<p><u>/s/ John I. Harris III*</u> JOHN I. HARRIS III (TN # 12099)</p> <p>SCHULMAN, LEROY & BENNETT PC 3310 West End Avenue, Suite 460 Nashville, Tennessee 37203 (615) 244 6670 Ext. 111 Fax (615) 254-5407 jharris@slblawfirm.com</p> <p>COUNSEL FOR JEFFERY W. TORMEY, GUN OWNERS OF AMERICA, GUN OWNERS FOUNDATION, TENNESSEE FIREARMS ASSOCIATION, AND VIRGINIA CITIZENS DEFENSE LEAGUE *Admission to NDTX pending</p>	<p><u>/s/ Brandon W. Barnett</u> BRANDON W. BARNETT Texas Bar No. 24053088</p> <p>BARNETT HOWARD & WILLIAMS PLLC 930 W. 1st St., Suite 202 Fort Worth, Texas 76102 817-993-9249 (T) 817-697-4388 (F) barnett@bhwlawfirm.com</p> <p>LOCAL COUNSEL, COUNSEL FOR JEFFERY W. TORMEY, GUN OWNERS OF AMERICA, GUN OWNERS FOUNDATION, TENNESSEE FIREARMS ASSOCIATION, AND VIRGINIA CITIZENS DEFENSE LEAGUE</p>

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on May 15, 2024 and that all parties will be served with the Original Complaint via certified mail and process server.

/s/Garrett Greene
GARRETT GREENE